

CAUSE NO. _____

EUGENE J. RIDEAUX,	§	IN THE _____ JUDICIAL
ELESTURED MCCULLOUGH,	§	
TIMOTHY BOONE,	§	
SARA FLOURNOY, and	§	
MARIA AGUILERA	§	
Plaintiffs	§	
v.	§	
HARRIS COUNTY HOSPITAL DISTRICT,	§	
DAVID S. LOPEZ, president and CEO of	§	
Harris County Hospital District,	§	
Sued in official capacity only;	§	
STEPHEN H. DONCARLOS,	§	DISTRICT COURT OF
CAROLYN TRUESDELL, ELVIN	§	
FRANKLIN JR., TJ TIJERINA	§	
E. DALE WORTHAM, DAISY STINER	§	
GEORGE D. SANTOS, ATUL	§	
VARADHCHARY, and	§	
LAWRENCE D. FINDER,	§	
Directors of the Board	§	
of the Harris County Hospital District,	§	
Sued in their official capacities only	§	
Defendants	§	HARRIS COUNTY, TEXAS

**PLAINTIFFS' PETITION FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

A. DISCOVERY CONTROL PLAN

1. Discovery is to be conducted at Level 2 of the Texas Rules of Civil Procedure.

B. INTRODUCTION

2. Harris County Hospital District is created and obligated to provide health care to all eligible residents of Harris County, Texas under Article IX, § 4 and § 9 of the Texas Constitution and § 281.046 of the Texas Health and Safety Code.

3. Pursuant to Texas Health and Safety Code § 61.005, “a county, public hospital or hospital district may request an eligible resident....to contribute a nominal amount toward the cost of assistance.” However, “the county, public hospital or hospital district may not deny or reduce assistance to an eligible resident who cannot or refuses to contribute.”
4. HCHD has repeatedly and consistently mandated contributions to the cost of health care assistance from indigent residents without issuing a written determination regarding the eligible resident’s ability to pay as required under Texas Health and Safety Code § 281.071.
5. HCHD has repeatedly denied treatment to eligible residents who have been unable to contribute to the cost of health care assistance in direct violation of Texas Health and Safety Code § 61.005.

C. PARTIES

6. Plaintiff Elestured McCullough is an indigent resident of Harris County, Texas and has been found eligible for indigent health care by HCHD. He has been charged fees for medical care provided by HCHD including prescriptions and clinic visits. Mr. McCullough has been denied treatment from HCHD as a result of his inability to contribute towards his health care costs.
7. Plaintiff Eugene J. Rideaux is an indigent resident of Harris County, Texas and has been found eligible for indigent health care by HCHD. He has been charged fees for medical care provided by HCHD including prescriptions and clinic visits. He receives irregular monthly income of approximately \$250 to \$300 per month from a family member as needed.

8. Plaintiff Timothy Boone is an indigent resident of Harris County, Texas and has been found eligible for indigent health care by HCHD. He has been charged fees for medical care provided by HCHD including prescriptions and clinic visits.
9. Plaintiff Maria Aguilera is an indigent resident of Harris County, Texas and has been found eligible for indigent health care by HCHD. She has been charged fees for medical care provided by HCHD including prescriptions and clinic visits. She has approximately \$200 per month in monthly employment income.
10. Plaintiff Sara Flournoy is an indigent resident of Harris County, Texas and has been found eligible for indigent health care by HCHD. She has been charged fees for medical care provided by HCHD including prescriptions and clinic visits. Up until April 2012 when Ms. Flournoy was approved for SSDI benefits, she had no regular monthly income.
11. Defendant Harris County Hospital District is a political subdivision of the state of Texas created pursuant to Texas Constitution Article IX § 4 and Texas Health and Safety Code § 281.001 et seq. A Hospital District board “may sue and be sued” pursuant to Texas Health and Safety Code § 281.056.
12. Defendant David S. Lopez is president and CEO of the Harris County Hospital District. He is the chief operating officer responsible for the operation of the HCHD and carrying out the policies of the HCHD Board. He is sued in his official capacity only.
13. Defendants Stephen H. Doncarlos, Carolyn Truesdell, Elvin Franklin Jr., TJ Tijerina, E. Dale Wortham, Daisy Stiner, George D. Santos, M.D., Atul Vardhachary, M.D., Ph.D., and Lawrence D. Finder are members of the Board of Directors of the Harris

County Hospital District. They establish the policies of the HCHD. They are sued in their official capacity only.

D. JURISDICTION

14. This Court has jurisdiction pursuant to Texas Constitution Article V, § 8. These claims are within the jurisdictional limits of this Court.
15. Pursuant to Texas Civil Practice and Remedies Code § 37.003, a court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.
16. Pursuant to Texas Civil Practice and Remedies Code § 65.021, a judge of a district or county court in term or vacation shall hear and determine writs of injunction.

E. VENUE

17. Venue is mandatory in Harris County pursuant to Texas Civil Practice and Remedies Code § 15.015.

F. STATUTORY FRAMEWORK

18. Under Texas Constitution Article IX, § 4 and § 9, the Legislature may by law authorize the creation of county-wide Hospital Districts.
19. Texas Constitution Article IX, § 4 and § 9 provide that “such Hospital District shall assume full responsibility for providing medical and hospital care to needy inhabitants of the county.”
20. Under Texas Health and Safety Code § 61.055, “a hospital district shall endeavor to provide the basic health care services a county is required to provide...together with any other services required under the Texas Constitution and the statute creating the district.”

21. Under Texas Health and Safety Code § 61.028, basic health care services which a county must provide include, among other things:

- (1) primary and preventive services, including medical screening services
- (2) inpatient and outpatient hospital services
- (3) laboratory and x-ray
- (4) physician services; and
- (5) three prescription drugs per month

22. Under Texas Health and Safety Code § 61.005, a “hospital district may request an eligible resident receiving health care assistance under this chapter to contribute a nominal amount toward the cost of assistance.” However, the district “may not deny or reduce assistance to an eligible resident who cannot or refuses to contribute.” *Id.*

23. Under Texas Health and Safety Code § 281.071, the Hospital District “administrator shall inquire into a patient’s circumstances and the circumstances of the patient’s relatives legally responsible for the patient’s support...”

24. Pursuant to Texas Health & Safety Code §281.071, “if the administrator finds that a patient or the patient’s relatives are not able to pay in whole or part, the district shall without charge supply the care and treatment to the patient.”

G. FACTS

Factual allegations herein regarding each Plaintiff occurred within two years preceding the filing of this complaint. All allegations regarding policies of the HCHD are in regard to HCHD policies that have been in effect and carried out by HCHD continuously during the past two years up to and including the present, the date of the filing of this complaint.

Harris County Hospital District

25. All acts or omissions attributed to HCHD were performed by Defendant's officers, trustees, employees, agents, representatives with the authority of HCHD and within the course or scope of their employment.
26. Defendant HCHD has policies and procedures which direct their employees to demand payment from eligible residents as a condition for receiving assistance, after the first "exception" has been made. This policy is a violation of Tex. Health and Safety Code §61.005(b).
27. Defendant HCHD previously posted signs and policies on its premises which lead eligible residents to believe that payment of co-pays is mandatory and a condition for receiving assistance.
28. Defendant HCHD has failed to individually evaluate a patient's circumstances in order to determine the financial ability of the patient or the patient's relative to pay. This policy is a violation of Tex. Health and Safety Code § 281.071.
29. Defendant HCHD has denied health care assistance to eligible residents as a result of their inability to contribute to the costs of their care. This policy is a violation of Tex. Health and Safety Code § 61.005.

Mr. Elestured McCullough

30. Plaintiff Elestured McCullough is an indigent resident of Harris County.
31. Plaintiff Elestured McCullough has been found eligible for indigent healthcare under Texas Health and Safety Code § 61.023. Mr. McCullough is an eligible patient of the Harris County Hospital District.

32. Mr. McCullough is unable to pay towards the costs of health care assistance. HCHD has failed to issue a written determination regarding his ability to contribute towards the cost of assistance.
33. On or about January 2012, Mr. McCullough received a Notice of Eligibility from the Harris County Hospital District and received a notice of HCHD fees. Mr. McCullough is consistently charged a co-pay for office visits. He is also charged a co-pay for prescriptions.
34. Mr. McCullough visited El Franco Lee Clinic for two doctor's visits in March 2012 and April 2012. He advised the receptionist that he would be unable to pay the co-pay for the visit. The receptionist advised Mr. McCullough on both occasions that he would be unable to see the doctor without paying the fees. Mr. McCullough left the clinic without being seen on both occasions.
35. On or about March 2012 and April 2012, Mr. McCullough has experienced difficulties paying for HCHD fees. The HCHD fees further limit his ability to pay for transportation costs to the clinic. HCHD fees also limit his ability to pay his rent and utilities. Mr. McCullough is an adult with no legally responsible relative. He has been unable to make payments for medical care.
36. On or about January 2012, Mr. McCullough has received notices about co-pays in Harris County Hospital District facilities and understands these notices to mean he will not receive care if he does not make these payments.

Mr. Eugene Rideaux

37. Plaintiff Eugene Rideaux is an indigent resident of Harris County, Texas.

38. Plaintiff Eugene Rideaux has been found eligible for indigent healthcare under Texas Health and Safety Code § 61.023. Mr. Rideaux is an eligible patient of the Harris County Hospital District.
39. Mr. Rideaux is unable to pay towards the costs of health care assistance. HCHD has failed to issue a written determination regarding his ability to contribute towards the cost of assistance.
40. On or about October 2010, Mr. Rideaux received a Notice of Eligibility from the Harris County Hospital District and received a notice of HCHD fees. Mr. Rideaux is consistently charged a co-pay for office visits. He is also charged a co-pay for prescriptions.
41. On or about April 2012, Plaintiff Eugene Rideaux has cooperated with Harris County Hospital District and pays the fees when he can.
42. On or about May 2012, he has been unable to pay the fees at the time of some visits and Mr. Rideaux has received several HCHD bills.
43. As a result of paying HCHD fees, Mr. Rideaux experiences difficulties paying for transportation costs to and from the clinics. He also experiences difficulty paying for ordinary personal hygiene products. Mr. Rideaux is an adult with no legally responsible relative. He has been unable to make payments for medical care. Mr. Rideaux has seen signs about co-pays in Harris County Hospital District facilities and understands these signs to mean he will not receive care if he does not make these payments.

Mr. Timothy Boone

44. Plaintiff Timothy Boone is an indigent resident of Harris County, Texas.

45. Plaintiff Timothy Boone has been found eligible for indigent healthcare under Texas Health and Safety Code § 61.023. Mr. Boone is an eligible patient of the Harris County Hospital District.
46. Mr. Boone is unable to pay towards the costs of health care assistance. HCHD has failed to issue a written determination regarding his ability to contribute towards the cost of assistance.
47. On or about December 2011, Mr. Boone received a Notice of Eligibility Renewal letter from the Harris County Hospital District. He received a notice of HCHD fees upon arriving for care at HCHD facilities. Mr. Boone is consistently charged a co-pay for office visits. He is also charged a co-pay for prescriptions.
48. On or about May 2012, Plaintiff Timothy Boone cooperated with Harris County Hospital District and paid the fees. On or about January 2012, Mr. Boone received a bill from the Harris County Hospital District, and he does not know the reason for the bill. Mr. Boone has been informed by HCHD staff that if he is unable to pay the doctor co-pay, he will be unable to see the physician.
49. As a result of paying HCHD fees, Mr. Boone experiences difficulties paying his utility bills. Mr. Boone is an adult with no legally responsible relative. He has been unable to make payments for medical care. Mr. Boone has seen signs about co-pays in Harris County Hospital District facilities and understands these signs to mean he will not receive care if he does not make these payments.

Maria Aguilera

50. Plaintiff Maria Aguilera is an indigent resident of Harris County, Texas.

51. Ms. Aguilera is an eligible patient of the Harris County Hospital District under Texas Health and Safety Code § 61.023.
52. Ms. Aguilera is unable to pay towards the costs of health care assistance. HCHD has failed to issue a written determination regarding her ability to contribute towards the cost of assistance.
53. During the past two years, up to and including May 14, 2012, HCHD has demanded fees and issued to Ms. Aguilera bills for medical treatment, for prescriptions, and for doctor visits.
54. Ms. Aguilera has never paid any of the bills mailed to her, but has generally paid all or part of the prescription fees for medicines and parts of the fees for treatments. She has currently been prescribed five regular ongoing prescriptions per month and has had as many as eight prescriptions per month. Within the past two years, HCHD charged her for the prescriptions every time she goes to the HCHD pharmacy window, including most recently on May 14, 2012.
55. Within the past two years, when Ms. Aguilera has been unable to pay the full amount of the charges for medications at HCHD, the pharmacy worker has told her that she must pay the rest of the charges the next time she comes for prescriptions. On two occasions in 2011, the HCHD pharmacy worker has told her that they will send her a bill to her house for the unpaid charges. HCHD has billed her for other things.
56. HCHD charged Ms. Aguilera \$131 for a mammogram on September 6, 2011, but she was only able to pay \$3 of that charge. Ms. Aguilera's daughter gave her the three dollars. HCHD billed Ms. Aguilera for the remaining \$128 for the mammogram in bills dated September 12, 2011 and October 5, 2011.

57. The bills contain language including as “PAY THIS AMOUNT \$128.00,” “Patient Balance Due Now \$128.00,” and “Unpaid balances aged over 90 days may be transferred to a collection agency for further collection.” Ms. Aguilera believed and believed that paying HCHD charges was mandatory and was afraid that if she did not or does not pay the HCHD bills she would or will be denied services, sued, or even imprisoned for failing to pay a government debt.
58. On or about October 28, 2011 HCHD charged Ms. Aguilera \$896 for laboratory tests. Ms. Aguilera could only pay \$3 of that charge. Her daughter gave her the \$3 for that charge and HCHD sent her bills for the remaining \$893 dated November 3, 2011 and November 28, 2011.
59. HCHD sent Ms. Aguilera a bill dated December 9, 2011 for \$1,021.
60. Ms. Aguilera is an adult with no legally responsible relative. Ms. Aguilera has been unable to make payments for medical care. She has seen signs about co-pays in Harris County Hospital District facilities and understood these signs to mean she will not receive care if she does not make these payments.

Sara Flournoy

61. Plaintiff Sara Flournoy is an indigent resident of Harris County, Texas.
62. Ms. Flournoy is an eligible resident of the Harris County Hospital District under Texas Health and Safety Code § 61.023.
63. Ms. Flournoy is unable to pay towards the costs of health care assistance. HCHD has failed to issue a written determination regarding her ability to contribute towards the cost of assistance.

64. Ms. Flournoy had no income other than \$20/week from her parents and has had no other income in the last three years. She used the \$20/week to pay for transportation on the Metro bus system, and for other personal needs. She is now receiving Social Security Disability Insurance.
65. During much of the last two years HCHD has demanded fees for each of Ms. Flournoy's medications. She currently takes 6 prescription medications on a regular basis.
66. Ms. Flournoy believed that paying the fees was mandatory and that HCHD would not provide the medicines she needed if she did not pay the fees.
67. Ms. Flournoy's parents had generally given her \$20/week, and for a long period she used that to pay for HCHD fees, leaving her with little or nothing to pay for clothes, haircuts, and other personal hygiene items.
68. Ms. Flournoy is an adult with no legally responsible relative. She has been unable to make payments for medical care. Ms. Flournoy has seen signs about co-pays in Harris County Hospital District facilities and understands these signs to mean she will not receive care if she does not make these payments.

I. CLAIMS FOR RELIEF

TEXAS DECLARATORY JUDGMENT ACT

69. Texas Civil Practice and Remedies Code 37.003 states:

Sec. 37.003. POWER OF COURTS TO RENDER JUDGMENT; FORM AND EFFECT. (a) A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. An action or proceeding is not open to objection on the ground that a declaratory judgment or decree is prayed for. (b) The declaration may be either affirmative or negative in form and effect, and the declaration has the force and effect of a final judgment or decree.

(c) The enumerations in § 37.004 and § 37.005 do not limit or restrict the exercise of the general powers conferred in this section in any proceeding in which declaratory relief is sought and a judgment or decree will terminate the controversy or remove an uncertainty.

70. Plaintiff's rights are affected by construction of the above-cited Texas statutes.

Therefore, Plaintiffs are entitled to seek, and do seek, a declaration of their rights under these statutes under Texas Civil Practice and Remedies Code § 37.003, § 37.004, and § 37.009.

71. Plaintiffs also seek a declaration of rights under Texas Constitution Article IX, § 4 and the Texas Health and Safety Code § 61 and § 281.

72. Texas Civil Practice and Remedies Code § 37.009 provides that in any proceeding under the Declaratory Judgment Act, the Court may award such reasonable and necessary attorneys' fees as are equitable and just. Plaintiffs' attorneys seek judgment against the Defendants for time and costs reasonably expended in this action.

APPLICATION FOR PERMANENT INJUNCTION

73. Texas Civil Practice and Remedies Code § 65.011(1) and (3) authorizes a writ of injunction to be granted "if the applicant is entitled to the relief demanded and all or part of the relief requires the restrains of some act prejudicial to the applicant" or if the applicant "is entitled to a writ of injunction under the principles of equity."

74. Plaintiff requests that the Court issue a permanent injunction against HCHD, its administrators, employees, and all persons acting in concert with them, enjoining them from denying or reducing care to eligible residents who cannot or refuse to contribute to the cost of their care.

75. Plaintiff requests that the Court issue a permanent injunction against HCHD, its administrators, employees, and all persons acting in concert with them, mandating that they post signs in their health care facilities containing accurate language from the Texas Health and Safety Code regarding **voluntary** contributions towards the costs of assistance.

76. Plaintiffs face imminent harm as the Defendant is currently maintaining its unlawful practice of charging fees to eligible residents who cannot pay for the costs of their care. Plaintiffs face irreparable injury as some of them may sacrifice their health care needs because of inability to pay HCHD fees in order to meet other financial obligations; such a choice may result in the exacerbation of any current or future medical problems.

77. Plaintiffs have no other adequate remedy at law.

M. PRAYER FOR RELIEF

78. Plaintiff requests that Defendants be served with process and required to answer as provided by law and that Plaintiff be granted the following relief:

79. Plaintiffs request a declaration of constitutional and statutory rights as set forth above.

80. Plaintiffs request that the Court issue a **permanent injunction** against HCHD, its administrators, employees, and all persons acting in concert with them, ordering that they:

- a) Issue a written determination regarding the Plaintiffs' ability to pay as required under Texas Health and Safety Code § 281.071.

- b) Refrain from denying assistance to eligible residents who have been deemed unable to contribute to the cost of health care assistance under Texas Health and Safety Code § 281.071.
- c) Post signs in all locations in which the HCHD takes applications or requests or collects co-pays or dispenses care to eligible residents, and in all locations in which the HCHD has posted its “HCHD FEE SCHEDULE” or co-pay amounts or policies, which state in clear, conspicuous language: “HCHD co-pays are requests for a voluntary contribution and are not required for treatment. HCHD is prohibited by Texas law from denying or reducing care to eligible residents who cannot or refuse to pay co-pays.”
- d) Remove all “HCHD FEE SCHEDULE” signs or posters from their premises which contain the sentence “The following services fee must be paid at the time you receive service and are for HCHD services only.”
- e) Cease using HCHD’s “Co-Pay Scripting” instructions for staff until HCHD revises the instructions to include information advising eligible residents that HCHD co-pays are requests for contributions, are not mandatory, do not create a legal debt, and that HCHD is prohibited from denying or reducing assistance to eligible residents who cannot or refuse to make co-payments.
- f) Remove from HCHD’s “Co-Pay Scripting” instructions for staff that Question and Answer section which reads “PATIENT: What if I cannot afford to pay for services? STAFF: You will need to reach out to your family, local

church, or another community resource Please contact them right away, if you do not believe you will be able to pay for services.”

- g) Cease distributing, in writing or orally, instructions to staff that say “IF AN EXCEPTION MUST BE MADE: Please pay whatever possible today. Going forward, exceptions will not be made. You will need to be prepared to pay the full amount due each time you receive services at a clinic, even when you do not see the doctor.” DO NOT MAKE AN EXCEPTION MORE THAN ONCE.” or “Co-payment overrides shall be authorized on a one time, case by case basis.”

81. Costs of this action.

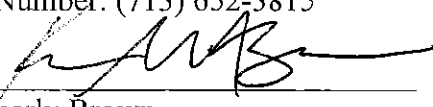
82. Reasonable Attorneys’ fees for the time spent by Plaintiff’s attorneys.

83. Any other relief to which the Plaintiff may be entitled.

Respectfully Submitted,

Attorneys for Plaintiffs
Elestured McCullough, Eugene Rideaux,
Timothy Boone, Maria Aguilera and Sara
Flournoy

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VERIFICATION BY EUGENE J. RIDEAUX

In the State of Texas
County of Harris

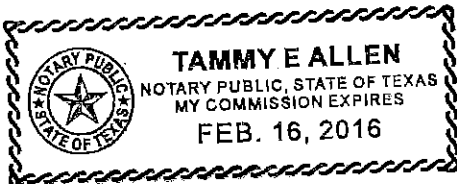
Before me, the undersigned notary, on this day personally appeared Eugene J. Rideaux and presented good and sufficient identification. After I administered the oath to Mr. Rideaux, Mr. Rideaux testified as follows:

My name is Eugene J. Rideaux. I am capable of making this verification. I read the above complaint. The facts stated herein regarding me and all other facts, except those specific to other individually named plaintiffs, are within my personal knowledge and are true and correct.

Eugene Rideaux
Eugene J. Rideaux

Sworn to and subscribed before me by Eugene J. Rideaux on May 29, 2012
date

Tammy E. Allen
Signature



TAMMY E ALLEN
Typed or printed Name
Notary public in and for the state of Texas.

My commission expires on 2/16/16.

VERIFICATION BY ELESTURED MCCULLOUGH

In the State of Texas
County of Harris

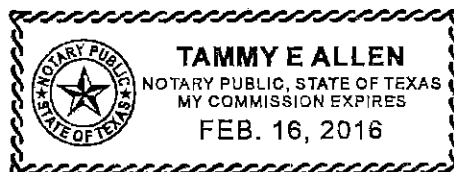
Before me, the undersigned notary, on this day personally appeared Elestured McCullough and presented good and sufficient identification. After I administered the oath to Mr. McCullough, Mr. Elestured McCullough testified as follows:

My name is Elestured McCullough. I am capable of making this verification. I read the above complaint. The facts stated herein regarding me and all other facts, except those specific to other individually named plaintiffs, are within my personal knowledge and are true and correct.

Elestured McCullough
Elestured McCullough

Sworn to and subscribed before me by Elestured McCullough on June 4, 2012
date

Tammy E. Allen
Signature



TAMMY E. ALLEN
Typed or printed Name
Notary public in and for the state of Texas.

My commission expires on 2/16/16.

VERIFICATION BY MARIA AGUILERA

In the State of Texas
County of Harris

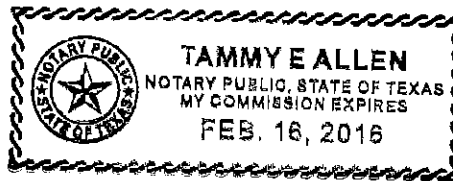
Before me, the undersigned notary, on this day personally appeared Maria Aguilera and presented good and sufficient identification. After I administered the oath to Ms. Aguilera, Ms. Aguilera testified as follows:

My name is Maria Aguilera. I am capable of making this verification. I read the above complaint. The facts stated herein regarding me and all other facts, except those specific to other individually named plaintiffs, are within my personal knowledge and are true and correct. The content of this form was translated to me from English to Spanish.

Maria Estela Aguilera
Maria Aguilera

Sworn to and subscribed before me by Maria Aguilera on 6/4/12
date

Tammy E. Allen
Signature



TAMMY E. ALLEN
Typed or printed Name
Notary public in and for the State of Texas.

My commission expires on 2/16/16.

VERIFICATION BY TIMOTHY BOONE

In the State of Texas
County of Harris

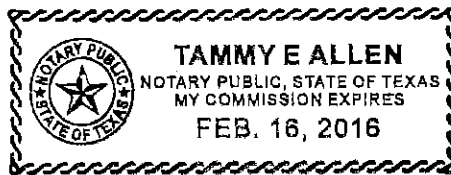
Before me, the undersigned notary, on this day personally appeared Timothy Boone and presented good and sufficient identification. After I administered the oath to Mr. Boone, Mr. Boone testified as follows:

My name is Timothy Boone. I am capable of making this verification. I read the above complaint. The facts stated herein regarding me and all other facts, except those specific to other individually named plaintiffs, are within my personal knowledge and are true and correct.

Timothy Boone
Timothy Boone

Sworn to and subscribed before me by Timothy Boone on June 7, 2012
date

Tammy E. Allen
Signature



TAMMY E. ALLEN
Typed or printed Name
Notary public in and for the State of Texas.

My commission expires on 2/16/16.

VERIFICATION BY SARA FLOURNOY

In the State of Texas
County of Harris

Before me, the undersigned notary, on this day personally appeared Sara Flournoy and presented good and sufficient identification. After I administered the oath to Ms. Flournoy, Ms. Flournoy testified as follows:

My name is Sara Flournoy. I am capable of making this verification. I read the above complaint. The facts stated herein regarding me and all other facts, except those specific to other individually named plaintiffs, are within my personal knowledge and are true and correct.

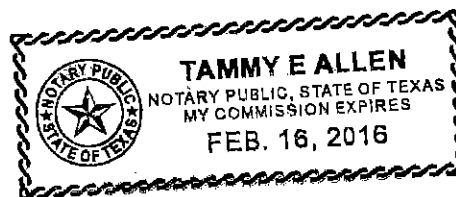
Sara Flournoy
Sara Flournoy

Sworn to and subscribed before me by Sara Flournoy on May 21, 2012
date

Tammy E. Allen
Signature

TAMMY E. ALLEN
Typed or printed Name
Notary public in and for the State of Texas.

My commission expires on 2/16/2016.



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